

St. John's Law Review

Volume 42
Number 1 *Volume 42, July 1967, Number 1*

Article 41

April 2013

CPLR 5201: Rent Income Held Attachable

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1967) "CPLR 5201: Rent Income Held Attachable," *St. John's Law Review*. Vol. 42 : No. 1 , Article 41.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol42/iss1/41>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

verdict interest, expressly rejected first department cases allowing it in similar situations.

Actually, the reasons that have motivated the courts to disallow pre-verdict interest in personal injury actions based upon tort are still applicable when the plaintiff frames his complaint so that it is based upon contract. In any event, it seems that a decision by the Court of Appeals or a legislative re-evaluation is warranted to prevent forum shopping within the state.

ARTICLE 52—ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5201: Seider procedure held constitutional.

Not unexpectedly, the constitutionality of the holding in *Seider v. Roth*¹¹⁴ was recently endorsed by the supreme court, Albany County, in a factually similar case. In *Jones v. McNeill*,¹¹⁵ the accident out of which the cause of action arose occurred in New Mexico. Defendants, residents of California, were personally served there, and an auto liability policy issued to defendants by an insurance company doing business in New York was attached by plaintiff as the jurisdictional basis. The defendants argued that the attachment of the insurer's obligation to defend and indemnify, as a basis for jurisdiction, was violative of due process in contravention of the fifth and fourteenth amendments of the United States Constitution.

The court answered that no deprivation of due process was shown. First, there had been reasonable notice to the defendant and sufficient opportunity for him to be heard. (He was personally served in California, and given the right to appear within thirty days.) Second, the court had jurisdiction over the subject matter of the action. Last, there was a jurisdictional predicate, since property of the defendant within the state was levied upon pursuant to an order of attachment. This property was a *res* within the state, allowing an adjudication as to whether the debt claimed by plaintiff should be satisfied out of it.

CPLR 5201: Rent income held attachable.

The plaintiff in *Glassman v. Hyder*¹¹⁶ attached a tenant's obligation to the defendants for the payment of rent on a twenty-

¹¹⁴ 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). The constitutionality of the procedure set forth in *Seider* was not there questioned or considered. For a discussion of the import of *Seider*, see *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 463, 490 (1967).

¹¹⁵ 51 Misc. 2d 527, 273 N.Y.S.2d 517 (Sup. Ct. Albany County 1966).

¹¹⁶ 51 Misc. 2d 535 (N.Y.C. Civ. Ct. 1966).

year lease. The New York City Civil Court, however, held that since no debt was presently due and since payments of future rent were contingent, the attachment was invalid. On appeal, the appellate term, first department, reversed.¹¹⁷

The court reasoned: CPLR 6202 allows attachment of a debt falling within the scope of CPLR 5201;¹¹⁸ 5201 must be read in conjunction with CPLR 5231; under 5231 income not due presently nor certain to become due may be used to satisfy a money judgment;¹¹⁹ therefore, the same type of income as would support an income execution under 5231 would support an attachment under 6202. Rentals accruing under a long-term lease, the court concluded, were that type of income.

It would appear that while 6202 would sanction attachment pursuant to 5231, the amount of income thus attached should be equivalent to the amount available for execution under 5231, i.e., ten per cent.¹²⁰ Therefore, examination of 5231 does not appear to give a satisfactory explanation of the result in the present case. It seems, rather, that this case evidences another effort by the courts to expand 5201(a) to include items that formerly would be considered contingent.¹²¹

CPLR 5201, 5222: Proceeds of an action may be the subject of restraining notices.

In *Iguanti v. Kronish*,¹²² plaintiff, after obtaining a judgment against the defendant, sought, by way of restraining notices,¹²³ to prevent payment to the defendant of any proceeds which might become due to him in a suit by the defendant against a third party. The court stated that while an assignment of a cause of

¹¹⁷ *Glassman v. Hyder*, 52 Misc. 2d 618, 276 N.Y.S.2d 453 (App. T. 1st Dep't 1966).

¹¹⁸ CPLR 6202 provides: "Any debt or property against which a money judgment may be enforced as provided in section 5201 is subject to attachment. . . ."

¹¹⁹ THIRD REP. 101, 275.

¹²⁰ Cf. *Cohen v. Carl M. Loeb, Rhoades & Co.*, 48 Misc. 2d 159, 264 N.Y.S.2d 463 (Sup. Ct. N.Y. County 1965) (future trust income held attachable to the extent of ten per cent in spite of its contingent character). For a thorough discussion of this area, see generally *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 644, 659 (1967) and *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 121, 153-55 (1966).

¹²¹ See *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966); *Baumgold Bros., Inc. v. Schwarzschild Bros., Inc.*, 276 App. Div. 158, 93 N.Y.S.2d 658 (1st Dep't 1949); *Glassman v. Hyder*, *supra* note 117.

¹²² 52 Misc. 2d 306, 276 N.Y.S.2d 130 (Sup. Ct. Bronx County 1966).

¹²³ CPLR 5222(b): "A judgment debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest. . . ."